IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO.860 OF 2006
IN
SUMMARY SUIT NO.3188 OF 2005

M/s.Arvindkumar Maganlal & Co. ....Plaintiff
V/s.
M/s.Jinsh & Co. ....Defendants
And
M/s.Rikita Enterprises Pvt.Ltd. ....Applicant

Mr.D.D. Madon, Senior Advocate with Mr.G.S. Godbole i/b Mr.H.V. Kode for the Applicant. .
Mr.D.H. Mehta with Ms.Yogini Gada i/b M/s.Harakhchand & Co. for the Plaintiff. .
Mr.Lilani Shah i/b Linani Shah & Co. for the Defendants.

CORAM : S.J. VAZIFDAR, J.
DATED : 22ND NOVEMBER, 2006.

P.C. :

1. This is a Notice of Motion to set-aside an order dated 1.12.2005 passed by me in Notice of Motion No.3670 of 2005 in the above Summary Suit. By the said order, the Defendants were restrained from parting with possession of or creating any third party rights etc. in respect of the property referred to in the Notice of Motion.

2. Notice of Motion No.3670 of 2005 in which I had passed the said order dated 1.12.2005 was under order 8 Rule 5 of the C.P.C. for attachment before

judgment. When I passed the order, naturally the Applicant was not before the Court.

3. The Applicant's case is that prior not only to the order but even to the filing of the suit, it had entered into an agreement dated 18.8.2005 for purchase of the said property. The property had been mortgage to Bharat Co-operative Bank Limited. The mortgaged was redeemed by payment of the entire consideration of about Rs.1,92,00,000/-. It is established that the entire payment for the said agreement had been made latest by 5.10.2005.

4. The suit was filed only thereafter on 18.11.2005 and the said order was passed by me on 1.12.2005.

5. There is nothing to indicate that the agreement dated 18.8.2005 is false or fabricated. Nor is there any doubt about the aforesaid payment having been made. There is nothing on record to indicate that the sale was at an undervaluation.

6. There is a serious dispute as to whether even the Defendants were served with a copy of the order dated 1.12.2005. The Plaintiff is always at liberty

to take out contempt or other proceedings and obtain necessary reliefs / declaration regarding the transaction. They have as of date not done so.

7. Even assuming that the conveyance dated 3.12.2005 had been executed by the Applicant contrary to the order dated 1.12.2005 and that the Applicant had knowledge of the order dated 1.12.2005, it would make little difference to the Applicant's case for the said order could not in any event affect the Applicant's right under the agreement for sale dated 18.8.2005 itself.

8. Mr.Mehta stated that the Defendant had sold the property to the Applicant contrary to and in breach of the assurance given to the Plaintiff. by a writing dated 1.10.2003. No proceedings have been adopted by the Plaintiff for enforcement of the alleged assurance. If the Plaintiffs desire to enforce any right on the basis of the said agreement, they ought to adopt appropriate proceedings for the same.

9. In the circumstances, Notice of Motion is made absolutely in terms of prayer (a).

10. The order is stayed till 22.1.2007 to enable the Plaintiff to challenge the order.